19 51

File No. O. charitable Endowments/51

Legal Department

A **BRANCH**

K

Subject:—

Opinions under the

Charitable Endowments Act

1890

P 44 E

File No. O. charitable Endowments/51

Gen. 194 e.

CONTENTS.

O.Charitable Endowments/51.

Legal Department File No.....

Sr.No.	R.I./O.No.	Subject	Pages.
		Opinions under the Charitable Endowments Act, 1890.	
1.)	O.No. 19/2-1-51.	Sec. 10 Re: European General (Lt. Georges) Hospital Endowment Fund Securities of the fund held by the treasurer of charitable Endowments, Bombay. Request to --- to sell the same and send the sale proceeds to the Hospital. Whether any orders in this respect are necessary from Govt.	1-4
2.)	O.No.27/2-1-51.	Sec. 10(2) and (3). Re: Shethani Harkuwarbai Girl's School, Ahmedabad Endowment Fund. Whether the advances made by the Hon. Secy. of the School, for the maintenance of the School and the gratuity proposed to be paid to teachers as resolved by the management of the School can be paid out of Endowment fund on an order issued by Govt. under clause 2 of the Vesting order issued under the Act.	5-8.
3)	O.No. 1871/31-1-51.	Re: Charitable Endowments Fund created under the Baroda Public Institutions Act, 1905, and vested in the A.G.Baroda who was treasurer of the Endowments. Position of --- after integration of the State.	9-12.
4.)	O.No. 2159/5-2-51.	Re: closure of the State managed Sanskrit Pathshala at Rajpipla, by this Govt. Request from the residents 1) either to reopen the same 2) or to hand over the building with its funds to the trustees of the Pathshala. Whether it would be correct to comply with the 2nd request.	13-14.

Sr.No.	R.I./O.No.	Subject	Pages.
5.)	O.No. 3021/17-2-51.	Re: Acceptance of the donation of Rs.50000/- from certain person by the Baroda Govt. for the construction of a School the estimated cost of which comes to Rs.1,37,707/- Whether it is obligatory for the Govt. to accept the donation in view of the estimated cost and to construct such a costly school building.	15-18.
6.)	O.No. 3291/22-2-51.	Re: Deed of gift passed by Govt. in favour of Benaras Hindu University in respect of certain property. Proposal of the University to dispose of the property and utilise the proceeds for a college building and hence request to Govt. to record its consent. Whether it would be in order for the Govt. of Bombay to give such consent.	19-22-
7.)		Re: G.R.,E.D.No.SSN1650 dt. 9-5-51. Re: Sir. J.J. Parsee Benevolent Institution Bombay. Grant-in-aid ~~ite~~. to.	23-24. [pp. 23-24 not typed.]
8.)	O.No. 7591/14-5-51.	Re; R.L.A's opinion No. 2159 dt. 5-2-51. Question regarding asking the persons concerned to get themselves appointed as trustees by a civil court.	25-26.
9.)	O.No. 10456/2-7-51.	Re: Acceptance of Donation from certain persons by Baroda Govt. for the construction of a School Building. Question regarding maintaining the school. whether after merger it would be obligatory on the Bombay State Govt. to maintain the School.	27-30.

Sr.No.	R.I./O.No.	Subject	Pages.
10.)	O.No. 8711/2-6-51.	Re: Acceptance of Donation from certain person by Baroda Govt. for the construction of a combined Hospital of six beds and maternity home of 10 beds. Whether after merger there are any legal obligations on this Govt. to fulfil the commitment made by the former Baroda Govt. by accepting the donation for a specific purpose.	31-36.
	O.No. 12831/9-8-51.	Whether the responsibility or liability in respect of the Commitments in connection with donations, of the premerger period should be accepted by this Govt. as Successor Govt.	37-40.
12.)	O.No. 15269/24-9-51.	Re: Acceptance of donation of Rs.50,000/- by Baroda Govt. for the Construction of a Girl's School. Proposal of the State Govt. to construct a building at a cost of Rs.3,20,000/- Whether it is obligatory on this Govt. after merger to undertake such a costly construction as the same was not taken inhand by the former Baroda State.	41-46.
13.)	O.No. 15323/25-9-51.	1) Whether the appointment of the Devasthan Board by the Sirohi State prior to merger for the management of eight temples would constitute one public trust or whether each of the temples will have to be regarded as a separate public trust. 2) Whether it is at all possible for this Govt. to refuse to recognise the Devsathan Board.	47-52. [PP. 47-50 not typed.]
14.)	O.No. 15808/5--1051.	Re: Endowments created in former Baroad State under the State Act.	

Sr.No.	R.I./O.No.	Subject	Pages.
		Position of --- ~~of the~~ merger under the Bombay Govt. Act.	53 -54.
15.)	O.No. 16170/11-10-51.	Re: Funds and the property of the King Edward Agricultural Institute and the Queen Victoria Memorial Fund at Kolhapur which constitute a charitable trust. Administration of-----	55-56.
16.)	O.No. 16513/18-10-51.	Re: Dispencary opened by former Jamkhandi State at certain village after accepting certain amount of donation from certain society of the Village whether having accepted the donation from the Society it would be competent for this Govt. to close the dispensary.	57-60.
17.)	O.No. 18027/13-11-51.	Whether it would be legally feasible for this Govt. to utilize the income derived from the colonel Reeves Memorial trust Fund for the purpose of awarding scholarships to students of the Mudhol High School.	61-64.
18.)	O.No. 19237/30-11-51.	Re: Management of certain temple at Nasik Whether committee appointed by Govt. under an executive order would be legally competent to evict the present manager of the temple.	65-68.

Sr.No.	R.I./O.No.	Subject	Pages.
19.)	O.No. 19418/3-12-51.	Re: Patuk Industrial School, Andhéri. Holding of securities of—— by the official trustee, Bombay Whether there would be any objection to hand over certain amount to the Institute.	69-76.
20.)	O.No. 19943/13-12-51.	Re: Anglo-Vernacular School started by Baroda Govt. with the help of donation from residents of certain village. transfer of management of the school by this Govt. after merger to certain private body.	77-78.

[pp. 73-76 not typed.]

L.D.R.I.No. 23290 dt. 25-11-50.

Submitted with reference to L.S.G.& P.H.D. note at page 55 ante.

2. In pursuance of the resolution passed by the Committee of the European General (St. George's) Hospital Endowment Fund, the Secretary and Treasurer of the Fund has requested the Treasurer of Charitable Endowments, Bombay, to sell the securities of the face value of Rs.1,70,000, held by him (i.e. T.C.E.) and send him a cheque for the proceeds in favour of the "European General (St. George's) Hospital Endowment Fund". The Accountant General who is also the T.C.E. for Bombay has, however, directed the Secretary and Treasurer of the Fund to approach Government for issuing a diverting order authorising the T.C.E. to transfer the securities as desired by him. L.S.G. & P.H.D. sees no objection to the transfer of the securities to the trustees of the fund as they propose to manage it in future in exactly the same way as it has been managed in the past and to place the proceeds of sale in fixed deposit with a bank. R.L.A. has been requested to state whether a diverting order in this case is necessary and if so what procedure should be followed.

Sd/-

MM
22/8-

Office of the R.LA.

Charitable Endowments Act, 1890 Sec. 10.

A direction of Government under section 10 of the Charitable Endowments Act, 1890 would be essential and no special procedure is prescribed.

Sd/- P.M.Lad.

e.c.

Remembrancer of Legal Affairs.

U.R.to L.S.G.& P.H.D.? No. 19, dated the 2nd Jan. 1951.

MM
23/8-

Office of the R.L.A.'s

Charitable Endowments Act, 1890
Sec. 10(2) &(3)
Shethani Harkuwarbai Girls, School, Ahmedabad.

The question raised for the R.L.A's consideration is whether the advances made by the Honorary Secretary, Shethani Harkuwarbai Girls School, Ahmedabad, for the maintenance of the School and the gratuity proposed to be paid to 3 teachers as resolved by the management of the School can be paid out of Endowment Fund of Rs.16,400/- on an order issued by Government under clause 2 of the Vesting Order issued under Charitable Endowments Act, 1890.

Under clause 3 of the Vesting Order at page 29 ante the income or the interest of the endowment fund alone is to be applied for the maintenance of the School. Under clause 2 of the Treasurer of the Charitable Endowments can dispose of the securities when so required and authorised by the direction issued and sanction given by the Local Government under sub-section (2) of section 10 of the Charitable Endowments Act, 1890. Under that provision, directions can be issued by Government requiring the Treasurer to sell or otherwise dispose of any property vested in him and with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security as is specified in the direction or in the purchase of immoveable property. It is apparent that this provision can be resorted to for the purpose of making a change in the mode of investment of the Endowment Fund and consequently, has no application in the present case. Under section 10,

sub-section (3) when a Treasurer of the Charitable Endowments is divested of any property by an order of Government it shall vest in the person or persons acting in the administration thereof and be held by him or them on the same trusts as those on which it was held by such Treasurer. This provision can be invoked for the purpose of transferring the endowment fund to the Ahmedabad Municipality on the trusts as those on which it was held by Treasurer of Charitable Endowment. Consequently, even after such transfer to the Municipality clause 3 of the Vesting Order would still be applicable and the corpus cannot be utilized for payment of the advances made by the Honorary Secretary nor for the maintenance of the School/for the payment of any gratuity to the teachers.

Sd/- P.M.Lad.
O.C.
Remembrancer of Legal Affairs.

U.R.to T.D.No. 27 dated the 2nd Jan. 1951

MM
23/8

Office of the R.L.A.

The funds in question are charitable endowments created under the Baroda Public Institutions Act, 1905 (Baroda Act VI of Samvat 1961) and vested in the Accountant General, Baroda who was apparently the Treasurer of Charitable Endowments under section 17 of the Baroda Act. Since the integration of the State, the State Accountant General appears to have been replaced by a Deputy Accountant General.

2. The Charitable Endowments Act, 1890, was included in the second schedule to the Bombay Merged States (Laws) Act, 1950. The result, therefore, in view of section 4(1) is that the portions of the Baroda Public Institutions Act corresponding to the provisions in the Charitable Endowments Act have ceased to have effect. The endowments, therefore, created in the Baroda State and now held by the Deputy Accountant General, are at present governed by the provisions of the Charitable Endowments Act, 1890. That being the position in law, the opinion of the District Government Pleader that no trusts have been created and the corpus of the endowment funds can by executive order of the Bombay Government be handed over to the Baroda University is not correct. No further action by the Bombay Government in regard to these funds or rather charitable endowments can legally be taken except in accordance with the provisions of the Charitable Endowments Act, 1890.

3. In regard to these endowments there are schemes embodied in Baroda State Government Resolutions. These schemes can be deemed to be schemes for the administration of the endowments under section 5 of the Charitable Endowments Act. It however appears from Secretary E.D's note at page 13-14a that some of the schemes will need modification having regard to the change of circumstances by reason of the merger of the State, the provisions of the Baroda University Act, etc. It will be open to Government to modify the schemes on application made by persons acting in the administration of the various endowments (see sect. 5(2) and sect. 6(1) of the Charitable Endowments Act, 1890).

4. The next question to be considered is whether the endowments, the benefit of which can properly be claimed by the Baroda University, can legally be vested in the University itself after divesting the Deputy Accountant General of them. That can be done under section 10 of the Act and the University shall hold them on the same terms as those on which they were held by the Treasurer of Charitable Endowments, i.e. the Deputy Accountant General. The Baroda University is a statutory body and section 4(13) of the Maharaja Sayajirao University of Baroda Act, 1949, makes provision for the University t hold endowments.

5. As regatds the other endowments the beflefit of which is not intended for the Baroda University, they will have after such modification of the schemes as may be

Contd.

necessary to be vested in the Treasurer of Charitable Endowments, who since the coming into effect of the Bombay Public Trusts Act, 1950, is the Charity Commissioner.

Sd/- P.M.Lad.
O.C.

Remembrancer of Legal Affais.

U.R.to E.D. No. 1871 dated the 31st January 1951.

MM
23/8-

L.D.R.I.No. 1656 dated 25-1-51

Submitted with reference to E.D. note at page 9 ante.

2. It appears that in 1949, the D.P.I., on the recommendation of the Educational Inspector, Baroda Division, ordered the closure of the State-managed Sanskrit Pathashala at Rajpipla, which has on its roll only six pupils and thus it had ceased to be useful in any way. Now Shri Chandulal Vyas and certain otherresidents of Rajpipla have protested against this action on the part of Govt. and have requested that (1) either the Pathashala be requested and continued to be maintained as a Govt. Institution or (2) the building of the Pathashala with its trust funds should be handed over to the trustees of the Pathashala. The Education Deptt. proposes to comply with the request of the applicants by handing over the funds to the trustees along with the building occupied by the Institution on the understanding that they should utilise the same for the purpose for which they were meant. R.L.A. has, however, been requested to advise in the matter.

Contd.

Reply may be:-

There would be no legal objection to handing over the property of the Patnashala to the persons who have been validly appointed as trustees. The four persons to whom Government purposes to hand over the property do not appear to have been so appointed. They should therefore be advised to get themselves so appointed by a Civil Court.

Sd/- R.T. 1/2.

R.L.A.

P.M.Lad.

MM
23/8-

Legal Department.

It appears that by his application dated 5th February 1949, Shri G.P.Ganpule offered a donation of Rs.50,000/- to the Baroda Government for the building of Sayaji Ganj Mixed School and the Baroda Government by its Order No. (R).267/87, dated the 28th April 1949 accepted the donation of Shri Ganpule on the following conditions:-

(1) the building will be constructed at the earliest Government convenience;

(2) the building will be constucted according to the standard Government plans and the construction work would be entrusted to Shri Ganpule who should execute it under the supervision of the P.W.D.

(3) a tablet describing the donation with the name of the donor should be placed on the building.

The donor has not actually paid the amount as according to one of the conditions agreed to the construction work is te be entrusted to the donor who should execute it under the supervision of the P.W.D. The estimated costs of the building amounts to Rs.1,97,707/- and it appears that Government is not inclined to construct such a costly school building at Sayaji Ganj. The question raised for the R.L.A's consideration is whether it is obligatory for the Government to accept the donation from Shri Ganpule now and to construct such a costly school-building.

2. As stated above Shri Ganpule has not yet paid the amount nor does it appear that he has set apart such amount for the purpose. Consequently his proposal, though accepted by the Baroda Government, is still in the nature of a promise to give to charity and it being a nudum pactum cannot be enforced by Government (See in Re Hudson. 1885

Weekly Notes p. 100). If Government cannot enforce the promise of Shri Ganpule, conversely, it would not be possible for even Shri Ganpule to enforce the execution of the acceptance of the donation. Moreover, the donation was accepted by the Baroda Government. As held by the Privy Council in the Secretary of State v. Bai Rajbai, (42.I.A. 229) the acceptance of the donation by the Baroda Government before the merger would not be an agreement enforceable against this Government, when there is nothing on record to show that it has expressly or impliedly agreed to such acceptance. Under the circumstances it would not be obligatory for this Government to accept the donation from Shri Ganpule now and to construct the costly building.

Sd/- J.R.Dhurandhar.

e.c.

Additional Secretary to Government.

U.R.to E.D.No. 3021, dated the 17th February 1951.

MM
23/8-

3193 dt. 15-2-51.

Submitted with reference to Chief Secy's note at p. 111 ante. By a deed of gift dated 25-11-1950 (p. 101 ante) the Govt. of Bombay have gifted away the property known as Jamkhandikar wada at Durga Ghat, Banaras, to the Benaras Hindu University for the purposes of the University. The U'sity proposes to dispose of that property and utilise the sale proceeds for a college building. The U'sity has asked for the concurrence of the Govt. of Bombay to this proposal. The question for the consideration of the R.L.A. is whether it would be in order for the Govt. of B'bay to give such consent.

Sd/-

A-L-R.

MM
23/8-

Legal Department.

The Deed of Gift passed by Government in favour of the Benaras Hindu University provides that the Donor is desirous of advancing the cause of education by making a gift of the said land and the buildings standing thereon to the donee for its purposes as University in the manner hereinafter appearing, and the Donee has agreed to accept the said gift subject tothe terms and conditions hereinafter contained. One of the conditions subject to which the gift was made and accepted is that the property must be held for the Donee's purposes as University subject to the payment of all rent, taxes etc., but the Deed of Gift does not provide for the revocation of the gift in the event of non compliance with any of the conditions attached to the gift. Consequently, even if the Benares Hindu University disposes of the property for constructing one of its college buildings, it would not be competent for Government to revoke the gift. At the most, Government can file a suit for restraining the University from disposing of the property as desired by it. If Government has no objection to the University disposing of the property as desired there would be no legal objection to government giving its consent to the proposed sale.

Sd/- P.M.Lad.
O.C.
Additional Secretary to Government.

U.R.to P. & S.D.,No. 3291,dated the 22nd. February 1951.

MM 23/8-

R.I.No. 4230
2/3/51

Submitted with reference to E.D. note dated 26-2-41.

The facts leading to the present reference are summarised in this office note underlying R.L.A's opinion No. 2159 dated 5th February 1951 in which R.L.A. observed inter alia that the four persons to whom Govt. proposes to hand over the property (of the Sanskrit Pathashala at Rajapipla) do not appear to have been validly appointed as trustees. The R.L.A. therefore advised that ~~the~~ these (four) persons should be advised to get themselves so appointed by a Civil Court. E.D. has recast para. 2 of the draft Govt. letter to be addressed to the D.P.I. in terms of the foregoing advice of the R?L.A. and presumes that it is not now necessary to ask the D.P.I. to regularise the procedure as suggested in the previous draft. L.D. is requested to confirm.

Legal Deptt.

Seen and returned.
Presumption made in paragraph 2 of the Education Deptt. note dated the 26th February 1951 is correct.

Sd/- ~~S.M.R.R.~~
Addl. Secy to Govt.

u.r. to E.D. No. 7591 dt. 14/5/1951

MM
23/8-

Office of the R.L.A.

It appears that a donation of Rs. 25,000/- was accepted by the Baroda Government from Shri Muljibhai Chhaganlal Mehta of Damnagar for constructing a school building for the Middle School at Damnagar on the following conditions :

(1) He (the donor) shall build the school on the land given by Government under the supervision of the Public Works Department according to the plans as provided by the Public Works Department.

(2) Government will help in securing cement and steel at controlled rates as far as possible

(3) The school will be named after the father of the donor as desired by him.

(4) The Public Works Department should hand over the possession of land for construction of the school building.

Although it may have been the intention of the donor and the donee that the latter i.e. Government should maintain the school, still it is not made one of the conditions subject to which Shri Muljibhai offered the donation of Rs. 25,000/-. If the aforesaid four conditions subject to which he offered the donation are fulfilled, he can have no grievance. After the merger of the Baroda State, the Bombay State Government would be bound by the aforesaid four conditions if the donation of Shri Muljibhai is to be accepted. It would not however be obligatory on the Bombay State

Government to maintain the school. If it be the policy of the Bombay Government to transfer such schools to private bodies for management, it would be competent for Government to transfer this school to a private body for management and such transfer will not involve any breach of the conditions subject to which Shri Muljibhai offered the donation. There will, therefore, be no legal objections to informing Shri Muljibhai that Government is not legally bound to run the school permanently and the school may have to be transferred to a private body for management. If Shri Muljibhai is unwilling to construct the building, he may be allowed to revoke the offer and asked to surrender to Government the land which has been given to him for the construction of the building.

Sd/- J.R.Dhurandhar.
O.C.
Remembrancer of Legal Affairs.

U.R.to E.D.No. 10456. dated 2nd July, 1951.

MM
23/8-

Office of the R.L.A.

It appears that Shri Bilimoria offered a donation of Rs. 75,000/- to the Baroda Government for the construction of a combined hospital of six beds and maternity Home of 10 beds at Bilimora subject to the conditions mentioned in his application dated 11th October 1941. Under Huzur Order No.82.14 dated 27th April 1942 the offer was accepted by the Baroda Government and Shri Bilimoria actually paid Rs. 50,000/- to the Baroda Government. However, the Baroda Government could not take up the work and in the meantime the Baroda State merged in the Bombay State; whereafter Shri Bilimoria began to press for the construction of the building. The Bombay Government considered that certain conditions attached by Shri Bilimoria were objectionable and that the estimated cost of the building being more than Rs. 3,00000 the scheme could not be undertaken unless the donor was prepared to increase the amount of donation from Rs.75,000/- to one lakh. By his letter dated 25th April 1950 Shri Bilimoria agreed to the modifications proposed by Government and to increase the donation as desired by Government, but he attached two conditions, namely,-

(1) that the foundation stone laying ceremony of the institution should be performed before 31st December 1950, and

(2) that the institution should be made available for the public within one year from the date of the foundation stone laying cermony.

Thereafter the question of actual cost of construction was considered and Government decided that the expenditure should not exceed two lakhs and the scheme should be modified accordingly. Shri Bilimoria having learnt of the Government's decision wrote to Government on 20th September 1950 inquiring whether he could induce some of his friends to donate further sums for the said institution on condition that the donations are deducted from the assessible income of the donors for the ppurpose of income tax so that the previous estimates of Rs.3,50,000/- for the construction of the building could be maintained. In the same letter Shri Bilimoria re-affirmed his two conditions attached to his offer to increase his donation from 75,000/- to one lakh. Government informed him that his proposal that the donations should be deducted from the assessible income of the donor from payment of the income tax was not legally feasible; whereafter Shri Bilimoria informed Government that he agreed to modify the original plan of the proposed combined hospital so as to accommodate the work within two lakhs as desired by Government. The Govemnment then considered that the construction of the combined hospital and maternity ward in Bilimora within Rs. two lakhs would not be feasible proposition even by reducing some of the major requirements of the hospital and decided to drop the proposal. The R.L.A. is requested to advise whether there are any legal obligations on this Government to fulfil the commitment made by the former

Baroda Government by accepting a donation for a specific purpose and to examine the legal position.

It is true that by accepting the donation of Shri Bilimoria for the construction of the hospital and maternity ward at Bilimora the Baroda Government must be deemed to have undertaken the obligation to construct the hospital, but such undertaking on the merger of the Baroda State would not be binding on the Bombay Government unless expressly or by implications the Bombay Government undertook to fulfil the contract. It appears clear from the correspondence referred to above that the agreement between the Baroda Government and Shri Bilimoria was at no time ratified by the Bombay Government and the negotiations for the variation of its terms have failed. In these circumstances there is no concluded contract between the Government and Shri Bilimoria and consequently, it would not be legally possible for Shri Bilimoria to insist on Government fulfilling the terms of his offer. He may be informed that the scheme is not feasible and the donation of Rs.50,000/- which has been accepted by the Baroda Government returned to him.

Sd/- J.R.Dhurandhar.

o/c.
Remembrancer of Legal Affairs.

U.R.to L.S.G. & P.H.D.No. 8711, dated the 2nd May June 1951.

MM 23/8-

Submitted with reference to Chief Secretary's note dated 19-7-51 at pp. 11-12 ante. Under clause (v) of question No. 2231 which Shri P.R.Patel M.L.A. proposes to put in the Bombay Legislative Assembly in regard to the policy of Government in respect of donations accepted by the former Baroda Govt. for the purpose of establishing works of public utility, Shri Patel wants to know whether it is a fact that the responsibility or liability or commitment undertaken by the former Baroda Govt. is transferred to the Bombay Govt. after transfer of power. The Chief Secy. proposes that the reply to this clause may be as follows:

"The question as to whether the responsibility or liability in respect of the commitments of the pre-merger period should be accepted by this Government as successor Govt. will have to be decided on the merits of each case, and such action as is appropriate in the context of the circumstances previous as well as subsequent to merger will have to be taken by this Govt."

The proposed reply is shown to the R.L.A.

Sd/- J.R.Dhurandhar.
8/8.

MM
23/8-

Office of the R.L.A.

Seen and returned. The draft reply proposed by the Chief Secretary is in order.

Sd/- J.R.Dhurandhar.

9/8

o.c.
Remembrancer of Legal Affairs.

U.R. to P.& S.D.,No. 12831, dated the 9th August 1951.

MM
23/8-

Legal Department.

This is in connection with the amount collected by the people of Kadi, District Mehsna, and handed over to the Baroda Government for the purpose of construction of a Girls' School and a Bal Mandir. A sum of Rs. 50,000/- was handed over to the Baroda Government on behalf of the people of Kadi on 12th April 1948. The Baroda Government accepted the donation and passed a resolution on 3rd May 1948. The conditions attached to the donation were that the school shall be named after Mahatma Gandhi, a tablet bearing the name of the donors donating Rs.2000/- or more shall be placed in one of the rooms etc. The Baroda Government order directed the Vidyadhikari to submit proposals with a view to early erection of the required buildings through the Chief Engineer. It appears that the necessary site was acquired by the Government of Baroda. That Government proposed to construct a building for the school at a cost of Rs. 3,20,000/- and plans and estimates amounting to that sum were prepared by the Chief Engineer and State Architect. Before the construction of the building started, however, the State merged. The people of Kadi are now pressing for the early construction of the building, but due to financial stringency it is not possible for the Government of Bombay to construct such a costly building. The Government of Bombay is prepared to spend only Rs.43,000/- on the building. The donors who were consulted are not agreeable to this arrangement

and in a meeting of the citizens of Kadi a resolution was passed calling upon Government to take immediate steps to give effect to the undertaking of the Baroda Government. Later on Dr. N.C.Patel and two others have on behalf of the residents of Kadi given a notice of suit under section 80 of the Civil Procedure Code of their intention to file a suit against the Government of Bombay with a view to compelling the Government to give effect to the promise of the Baroda Government. As however it is not possible for Government to spend such a large sum as Rs.320,000/- on the construction of a Girls' school, it is proposed to explain to the donors' representatives that Government would stick to its previous decision and in case they are not agreeable to the arrangement decided upon by Government, Government would abide by an appropriate direction from the Court and return the amount of the donation to the donors. The Under Secretary, E.D. considers that the only solution would be to return the amount of the donations, if that would be legally feasible. The R.L.A. is requested to advise.

2. It is true that the donation was accepted on behalf of the Government of Baroda and orders were issued for taking steps for the early erection of the school building. But the assumption made in the resolution at page 135 of the corresponsence section that the Bombay Government has approved the said plans and estimates and has ordered the Educational Department to provide for the

necessary budget for the said construction is not correct As stated in paragraph 3 of the E.D. Note at page 91 ante and conditions on which the donation was accepted by the former Baroda Government do not make it incumbent on the Government of Bombay to build such a costly Primary School Building at Kadi. In the merged Baroda State there were in existence rules in regard to the acceptance of donations from private institutions and individuals for purpose of dispensaries, educational institutions and other public purposes. These rules known as "The Danagi Swikarava Sambandhi Niyam" though made under the orders of the Ruler had the force of law; and after the merger of the State and on the application of the Bombay Acts to the merged area of Baroda they have not been superseded either specifically or by virtue of paragraph 5 of the Baroda State (Application of Laws) Order, 1949. Presumably the acceptance of the donation of Rs.50,000/- from the people of Kadi by the former Government of Baroda was in pursuance of these rules; and it would appear that the responsibility in respect of the acceptance of the donation would now devolve on the Government of Bombay. The Rules, however, do not impose any obligation on Government to execute the work in regard to which the donation in question had been accepted. Rule 4 (ब) of the said Rules provides that if after the acceptance of the donation it is not possible on account of any reason to carry out the object of the donation within a period of seven

years, the amount of donation would be returned. It would, therefore, be legally feasible for the Government, as proposed by the E.D.? to return the amount of the donation in case the people of Kadi are not agreeable to the erection of the building as proposed by Government. It does not appear likely that the donors will if any suit is filed against Government be able to obtain an order from a Court compelling Government to construct a costly building as proposed by the Engineering Department of the former Government of Baroda.

Sd/- P.M.B.

O.C.

Additional Secretary to Government.

U.R.to E.D.No. 15269, dated 24th September 1951.

MM
23/8-

Office of the R.L.A.

It appears from 'C' in the Charity Commissioner's note at page 109 ante that the Devasthan Board in question was constituted under the provisions of the Sirohi State Court of Wards Act. When the administration of the Sirohi State was handed over to the Government of Bombay the State's merger (Bombay) Order, 1950, was issued by the Governor General. Under the first sub-para of para 4 of that order all laws in force in the merged Sirohi State area immediately before the 25th January 1950 ceased to be in force in that area and all laws in force in the District of Banaskantha were brought into force. Under the proviso to that paragraph anything done or any action taken under the laws in force in the merged area before 25th January 1950 is to be deemed to have been done or taken under the corresponding law in force inthe Banaskantha District. There does not appear any law in force inthat district which empowers the State Government to constitute a board of the type of the Devasthan Board appointed by the Sirohi State. The Devasthan Board therefore cannot legally continue to exist after the merger of Sirohi State. If R.D. desires to continue the Board, the proper procedure will be to dissolve the present Board and to peconstitute it and reappoint the members to the said Board by an executive order. Government can lay down conditions and frame new rules for the management of the Devasthans. Before making the new appointment; the consent of the members nwho are non officials will have to be taken. The official

Contd.

members can be appointed by virtue of their office. If the present members raise any trouble and refuse to give up the management, a suit under sections 92 and 93 of the Civil Procedure Code will be necessary.

Sd/- J.R.Dhurandhar.

O.C.
Remembrancer of Legal Affairs.

U.R. to P.& S.D.No. 15323, dated the 25th September 1951.

MM

23/8-

Office of the R.L.A.

The R.L.A. has already pointed out in para 3 of his opinion No. 1871 dated 31-1-1951 that the endowments in question are trust properties and are now governed by the provisions of the Charitable Endowments Act, 1890. In respect of each of these endowments there are schemes embodied in Resolutions issued by the Baroda Government and on the application of the Charitable Endowments Act, 1890, to the merged area of Baroda these schemes will have to be deemed to be schemes settled under section 5 of the Charitable Endowments Act for the administration of the endowments. The R.L.A. had further pointed out that it would be open to Government to modify the schemes under section 5(2) of the Act on application made by the parson or persons acting in the administration of the various endowments in the manner prescribed by section 6 of the Act. It has also been pointed out that the endowments whose benefits can properly be claimed by the Baroda University can be legally vested in the University on Government issuing a direction under section 10 of the Charitable Endowments Act, 1890. It would be seen from the provisions referred to that there would be no legal hindrance in giving effect to the various decisions that may be reached by Government in the matter.

Sd/- J.R.Dhurandhar.
O.C.
Remembrancer of Legal Affairs.

U.R.to E.D.No. 15808. ,dated the 5th October 1951.

MM 23/8-

LEGAL DEPARTMENT.

The funds and other property of the King Edward Agricultural institute and the Queen Victoria Memorial Fund constitute a charitable trust and cannot be handed over to the Committee which the public of Kolhapur propose to constitute for the administration of the trust. The persons in whose names the Government securities stand should, at the request or direction of the members of the committee acting in the administration of the trust be asked to apply to Government under section 5(1) of the Charitable Endowments Act, 1890 for vesting the funds in the Treasurer of Charitable Endowment and for a scheme being framed by Government for the administration of the trust; and on such application being made it would be competent for Government to frame a scheme providing for a permanent display of agricultural exhibits and progress of agriculture in the Kolhapur district as proposed by H.M.(Agricultural) as these purposes would carry out the object of the trust.

Sd/-

Additional Secretary to Government.

U.R.to A.& F.D.No. 16170, dated the 11th October '51.

MM
23/8-

OFFICE OF THE R.L.A.

It appears that the Home Minister, Jamkhandi State, before the merger of that State prepared a model village scheme for the village of Hulyal, Taluka Jamkhandi, and submitted it to the Rajasahab of Jamkhandi, stating that the Weavers' Co-operative Society at Hulyal was willing to contribute Rs. 2,500/- to start with and Rs.2,500/- should be given by Government for starting a dispensary in that village and recommending that the Dharmashala should be converted into a dispensary and library. The Rajasaheb of Jamkhandi, by his order dated the 3rd February 1948 approved the scheme, directed that Rs.2500/- should be taken from the Weavers' Co-operative Society, Hulyal, and that Rs.2500/- should be spent from the total budget of Rs.6000/- sanctioned for model village inthe State. The Executive Council passed a resolution that the Medical Officer should draw his pay and allowances from the budget provided for the model village. The dispensary was accordingly opened by the Rajasaheb of Jamkhandi on 1st March 1948. Out of the amount of Rs. 2,500/- contributed by the Weavers' Co-operative Society Rs. 241 and odd were spent for medicines, Rs. 72 andodd for opening ceremony, Rs.445/- were paid to the Chief Medical Officer, and the balance of Rs.1730 and odd was handed over to the Registrar, Co-operative Officer. It is now found that the scheme did not work satisfactorily and the necessity of a dispensary is not felt in the village in view of the fact that there is already a government dispensary within a radius of four miles. Accordingly,

Government proposes to close the dispensary. R.L.A. is requested to advise whether having accepted the donation of Rs.2500/- from the Weavers' Co-operative Society, Hulyal, it would be competent for Government to close the dispensary.

2. It appears from thefacts stated above that the dispensary was started not as a charitable dispensary but as a Government dispensary. As stated by the Surgeon-General with the Government of Bombay, that the Weavers' Co-operative Society did not specifically attach any condition to the donation of Rs.2500/-, but it is apparent that the donation of Rs. 2500/- was intended for the maintenance of a dispensary at Hulyal. Out of the donation of Rs.2500/- only Rs.1700/- and odd have been paid to the State Treasury. This amount, Government will be under an obligation to return to the Society if the dispensary is to be closed. As stated above the dispensary was to be maintained out of the Government funds. Consequently, there would be no legal objection to closing it if it be found not necessary in view of the fact that there is already a government dispensary within a radius of four miles. But, as stated above, Government will have to return Rs.1700/- and odd received by the State Government from the Weavers' Co-operative Society, to the society.

Sd/- J.R.Dhurandhar.

Remembrancer of Legal Affairs.

U.R.to L.S.G. & P.H.D.No. 16518, dated the 18th October 1951.

MM 23/8-

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether it would be legally feasible for Government to utilize the income derived from the Colonel Reeves Memorial Trust Fund for the purpose of awarding scholarships to students of the Mudhol High School. Colonel Reeves was Political Agent for the Deccan States in the year 1883. On his death a fund of Rs.2,000/- was raised and it was resolved to erect a market to be named after him and to utilise the income derived from the market for awarding scholarships to students. The Director of Education reports that no trust deed has been executed and no information is available regarding the terms andconditions for the utilization of the income. Till the merger of Mudhol State no scholarships had been awarded. The management of the market is entrusted to the Sub-Registrar, The present balance of the fund constituted out of the income derived from the market with interest thereon amounts to Rs.2392-7-9. The amount is deposited in the Mudhol Bank to the account of the Collector.

2. It would be seen from the history of the fund that a constructive trust has been created in this case. The property of the trust consists of the Reeves Market and the income utilized for awarding scholarships as originally proposed there is at present a balance of Rs.2392/- standing to the credit of the trust. The Director of Education states that it is not known on what terms and conditions the scholarships were intended to be awarded, In these circumstances it would not be possible for Government to direct how the scholarships should be awarded.

Contd.

A public charitable trust being in existence and no conditions having been laid down for the utilization of the income of the trust the first thing requested to be done would be to file a suit under sub-section (1) of section 92 and section 93 of the Civil Procedure Code for the directions of the Court for the administration of the trust. Such suit can, in this case, be filed by the Collector or by the Sub-Registrar who is in charge of the administration of the the Reeves market. On seeking the directions of the Court and settling a scheme for the utilization of the income derived from the market, it would be feasible to give effect to the proposal made by the Director of Education, viz., to award scholarships to students from the Mudhol High School.

Sd/- J.R.Dhurandhar.

O.C.
Remembrancer of Legal Affairs.

U.R.to E.D.No. 18027 dated, 13th No vember 1951..

MM
23/8-

18715
10-9-57

pp.57-58 ante. pp.59-60 ante.

The facts are stated in the letter from the Commissioner C.D.No.LND.1/1348 dated 9-8-1950 and in the R.D. Office note dated 18-10-1950. In view of the peculiar facts, the Collector of Nasik and the Commissioner C.D. proposed that a Committee should be appointed from amongst the prominent members of the Village communities for the efficient management and upkeep of the Devasthan. This proposal was accepted by Government and in R.D. endorsement No.O/67100 M dated 21-10-1950, Government informed the Collector of Nasik to appoint a Committee from amongst the prominent persons of the Village communities for the efficient management of the Rama (Vithoba) temple in Malegaon and to hand over management thereof to the Charity Commissioner subsequently etc. A Committee consisting of seven persons was accordingly appointed by the City Survey Officer, Malegaon for management of the said temple. The Collector of Nasik however, reports that the Mamlatdar of Malegaon tried to hand over the management of the temple to the newly appointed Committee but the owner of the temple, Shrimati Narmadabai raised objection and is reluctant to hand over possession of the Devasthan to the Committee. Shrimati Narmadabai resides at Poona. The Collector has raised the question whether he should take steps to hand over possession

pp.11 & 57 ante.

p. 61 ante.

p.77 ante.

p.89 -do-

Contd.

of the temple to the Committee in the absence of the owner in the presence of the Panchas.

The question for R.L.A's consideration is whether it would be legally feasible to enforce the Government Order and take over the management of the temple and hand it over ~~the management of~~ to the Temple Committee.

Sd/-

Addl. Secy.

MM

24/8-

Legal Department.

The view taken by R.D. is correct. The Committee appointed by Government under an executive order would not be legally competent to evict the present manager of the temple unless the members of the Committee get themselves appointed as trustees by the Court.

Sd/- P.M.La d.

O.C.

Additional Secretary to Government.

U.R.to R.D.No. 19237, dated the 30th November 1951.

MM
24/8-

24516 dt. 27-11-51.

Submitted with reference to E.D. Under Secy.' note at p. 8 ante. By an indenture dt. 14-3-1950 the Official Trustee, Bombay, has been appointed trustee of the property consisting of Government securities of the face value of Rs.2,56,200/- and cash of Rs.14,373/3/- bestowed by the late Shri. R.H.Patuk for the purposes of conducting an Industrial school on the terms and conditions embodied therein. On the request made by the Chairman of the Organizing Board of the Patuk Industrial School, the Official Trustee, Bombay, enquiries whether he should pay a sum of Rs.1,50,000/- to the Institute. The E.D. thinks that there is no objection to paying the said sum in view of condition (5) in the deed. The R.L.A. is requested to advise.

Sd/-

MM
24/8-

OFFICE OF THE R.L.A.

Clause 5 of the Indenture dated 14th March 1950 provides as follows :-

"5. The Trustee may with the previous consent of the Government and the Corporation hand over to the Chairman of the said Patuk Industrial School Andheri, any portion of the corpus of the trust fund, provided the same is required for the purposes of reorganisation of the said school."

If an amount of Rs.1,50000 a portion of the corpus is required for the purpose of reorganising the school, there would be no objection to making the payment as required by the Chairman of the Organizing Board of the School; but it is necessary for the Official Trustee to first obtain the consent of Government and the Corporation. It is not clear from these papers whether the Official Trustee has also obtained the consent of the Municipal Corporation. Unless the Government and the Corporation grant their previous consent it will not be feasible for the Official Trustee to make the payment.

Sd/- J.R.Dhurandhar. 3/12
O.C.

Remembrancer of Legal Affairs.

U.R.to E.D.No. 19418, dated the 3rd December 1951.

MM
24/8-

Office of the R.L.A.

From Tipun No.614/649 dated the 21st May 1920 it appears that the people of Mahelav were running by private enterprise an A.V.School teaching upto standard third and the donation of Rs.15,000/- was handed over by them to the Baroda Government, in consideration of opening an Anglo-Vernacular School at Mehelav teaching upto Standard V and running it as a Government school. By its order No. 195/74 dated the 18th June 1920 the Baroda Government accepted the donation and directed that Government A.V.School teaching upto only standard IV may be opened at Kehelav. By para 2 of this order recurring annual expenditure of Rs.1275/- as mentioned in the annexture thereto was also sanctioned. It is therefore clear that under this order the Government of Baroda in consideration of the donation of Rs.15000/- assumed the responsibility of running the A.V.School teaching upto Standard IV(present Standard VIII) and it appears that this responsibility in respect of the acceptance of the donation would now devolve on the Government of Bombay. Accordingly this Government is conducting the school teaching standards VII and VIII. If it be the policy of Government to transfer such schools to private bodies for management on such terms as are acceptable to Government there would be no legal objection to so transfer the school on condition that a sum of Rs.15000/- as proposed in the present case is set apart for running the school and the school should be maintained.

Sd/- J.R.Dhurandhar.
Remembrancer of Legal Affairs.

U.R.to E.D.No. 19943, dated the 13th December 1951.

MM 24/8-